

APPENDIX C- CULTURAL RESOURCES

INTRODUCTION

Cultural resources can be defined as the broad pattern of events, real properties, and cultural lifeways or practices, that have significance to humans. Buildings and places where significant events occurred, archeological sites containing significant information about human activities, traditional places or activities that hold special significance, and folkways which are practiced as either cultural or life sustaining, are all part of the broad category features of groups of people. The potential cultural resources within the Onion Creek project areas will be properties of an archeological nature consisting principally of the traces of prehistoric and historic peoples. These types of historic properties are evaluated for eligibility or listing in the National Register of Historic Places (NRHP). Section 106 (16 U.S.C. 470f) of the National Historical Preservation Act requires that Federal agencies consider their undertakings, or projects, and the potential of those undertakings to impact NRHP eligible or listed properties through the procedures found in 36 CFR Part 800 (*Protection of Historic Properties*). These consultations must include the Texas State Historic Preservation Officer (SHPO) and with Federally recognized Native American tribes that historically used, or still use the project area. The Corps has begun this consultation process by notifying the SHPO and the appropriate Native American tribes of the proposed project undertakings.

While the probability of discovering human remains within the project area is slight, the appropriate course of action must be taken by the Corps if indeed such a discovery is made. Native American burials are subject to the considerations of Native American Graves Protection and Repatriation Act for the proposed undertaking. As such, should human remains be uncovered at any time during the study or during project construction, all work within the vicinity of the find shall cease and the cultural resources technical point of contact for the Corps and the SHPO shall be notified immediately. Work shall not commence within the vicinity of the burial site until an appropriate course of action has been agreed upon in consultation with the SHPO and any participating Tribes.

The cultural resources component of these proposed undertakings for the Onion Creek project areas considers all of the legal responsibilities and obligations of Corps, with respect to all applicable cultural resources laws, Executive Orders, Presidential Memoranda, and U.S. Army Corps of Engineers Regulations, including, but not limited to: the *National Historic Preservation Act* (NHPA) of 1966 (Public Law (PL) 89-665 *et seq.*), the *National Environmental Policy Act* (NEPA) of 1969 (PL 90-190 *et seq.*), the *Native American Graves Protection and Repatriation Act* (NAGPRA) of 1990 (PL 101-601), Executive Order 13007 (*Accommodation of Sacred Sites* - 24 May 1996), *Government-to-Government Relations with Native American Indian Tribal Governments* (Presidential Memorandum of 29 April 1994), and Engineer Regulation (ER) 1105-2-100 (*Planning Guidance Notebook*).

The U.S. Army Corps of Engineers, Fort Worth District, considers all of its impacts and possible effects prior to any construction and systematically establishes a strategy to account for, avoid when possible, and provide for a mitigative strategy on unavoidable significant impacts to, cultural resources.

SUMMARY OF PROPOSED UNDERTAKING

The proposed undertakings in this feasibility study have been examined for the potential to impact cultural resources within the Bear Onion Confluence, Timber Creek and Onion Creek Forest/Yarrabee Bend (Yarrabee Bend) project areas within the Onion Creek watershed in Travis County, Texas.

TIMBER CREEK

The proposed undertaking for the Timber Creek project area consists of an evacuation plan that is essentially an extension of the buy-out program initiated between the county and FEMA. However, the proposed plan would focus on eliminating the property gaps left by implementation of the FEMA program. This would then allow a larger, continuous sector of land to be used for more flood plain compatible purposes. The Corps' plan would require purchase of 63 structures in addition to those structures already proposed for buy-out under the FEMA program. A multiuse plan is being developed to include ecosystem restoration and recreation facilities such as picnic areas, nature areas and athletic courts to be developed on the land once the structures have been cleared.

ONION CREEK FORREST/YARRABEE BEND

Buy-out of the 25-year flood plain was the proposed non-structural plan in the Yarrabee Bend project area. The City of Austin has already initiated a program to buy out the lowest lying residences, which are primarily mobile homes. The plan calls for the removal of over 300 structures including both mobile homes and permanent residences. Once cleared, the proposed plan calls for mixed use recreation and ecosystem restoration features on the property.

BEAR ONION CONFLUENCE

Buy-out of the 25-year flood plain was the selected measure of choice for the non-structural evaluation for the Bear Onion confluence project area. There are only four structures identified as part of the 25-year flood plain evacuation, but there are also several structures located near the immediate confluence area, which may have buyout potential. The creek banks in this area have very steep side slopes limiting the reuse of the property once it has been cleared. Ecosystem restoration features will be implemented along the slopes to encourage native plant growth in the riparian zone.

WILLIAMSON CREEK

The Williamson Creek project area has substantially different character than the Onion Creek project areas included in this analysis. Similar to those areas along Onion Creek, flood plain evacuation, or buy-out, of the 25-year flood plain combined with recreation and ecosystem restoration features was selected as the non-structural alternative for the Williamson Creek area. However, unlike the project locations on Onion Creek, some channel modification in the form of benching is also necessary along Williamson Creek. Due to the planned channel modification, shovel testing was deemed insufficient for the Williamson Creek project area. Deep backhoe trenching will be conducted at that location during the next phase of the study; once the property has come into project ownership. Full analysis of the Williamson Creek project area will be completed, in consultation with the SHPO, prior to any construction activities.

CULTURAL RESOURCE INVESTIGATIONS

PREVIOUS CULTURAL RESOURCE INVESTIGATIONS – THE PROJECT VICINITY

In 2002, the Corps contracted the archaeological firm Prewitt & Associates to conduct archival research and reconnaissance surveys for the Onion Creek Basin study (Ringstaff et al. 2002). That study included six damage areas then under consideration as possible project locations. Since that time, four damage areas have been carried forward for project design; Timber Creek, Yarrabee Bend, Sunset Valley (Williamson Creek) and Bear Creek/Onion Creek confluence. The damage areas investigated in 2002 are larger than the defined project areas discussed here for the purposes of understanding cultural resources within a vicinity of the project areas, as well within the footprints. The Yarrabee Bend Damage area assessed in the 2002 report measures approximately 3km (1.8 miles) in diameter with the currently identified project area measuring approximately 309 acres, located in the center of the damage area. The Timber Creek Damage Area that was investigated in 2002 is approximately 2.5km (2 miles) in diameter with the current 57-acre project area located in the east central portion of the damage area. The Williamson Creek project area is within the Sunset Valley Damage Area. The proposed project consists of approximately 220 acres in the center and eastern edge of the damage area. The Bear Creek Damage Area was the smallest of the four investigated. In the 2002 report, the whole damage area measured approximately 1.5km (0.9 miles) in diameter with the proposed project area encompassing 17 acres located in the southwestern portion of the circle. None of the resources found during the 2002 archival research is located within the currently identified project footprints. A summary of the resources found within these three damage areas, as reported by Ringstaff, et al., in 2002, is provided below.

Review of the map, county, and site files at the Texas Archaeological Research Laboratory (TARL) of the University of Texas at Austin; the online Historic Sites Atlas maintained by the Texas Historical Commission; and the survey and files reports, National Register of Historic Places nominations and Recorded Texas Historic Landmarks files at the Texas Historical commission revealed that the Onion Creek watershed has seen several major archaeological and historical projects that have contributed important information to our understand of the prehistory and history of the Austin region. Among the more significant projects are the 1953-1954 excavations by the department of Anthropology, The University of Texas at Austin, at the Collins site, a stratified prehistoric campsite on Onion Creek approximately 1.7 km (1 mi) east of the Yarrabee Bend damage area (Suhm 1955); excavations at the Smith Rockshelter, a stratified prehistoric site in McKinney Falls State Park approximately 1.2 km east of Yarrabee Bends Damage Area (Suhm 1957); archaeological survey and investigations at the McKinney homestead in McKinney Falls State Park just east of the Yarrabee Bend Damage Area (McErchern and Ralph 1981); a series of survey and small testing efforts focused on the South Austin Regional Wastewater Treatment Plant downstream of the Timber Creek Damage Area (Brown 1981; McWilliams et al. 2000; Thurmond 1982; Whitsett and Fox 1979); extensive excavations by TARL and the Texas Department of Transportation at the prehistoric Barton and Mustang Branch sites on Mustang Branch, a tributary to Onion Creek located some 7.2km southwest of the Bear Creek Damage Area (Ricklis and Collins 1994); archaeological and architectural survey testing, and historic context development for Austin-Bergstrom International Airport just west of the Timber Creek Damage Area (Bement 1991; Freeman et al. 1994; Lahse and Iruegas 1998; Lohse et al. 1997; Maslyk et al. 1993; Masson et al. 1994; Myers et al. 1996a); preparation of a National Register of Historic Places nomination for the Moore's Crossing Historical District on Onion Creek just southwest of the Timber Creek Damage Area (Myers et al. 1996b); and excavations by personnel from Hicks and Company at the prehistoric Toyah Bluff site overlooking Onion Creek approximately 0.5 km east of the Timber Creek Damage Area (Karbula et al. 2001).

Seven investigations conducted between 1978 and 1994 and documented with both reports and site forms dealt with parts of the three damage areas in which projects are being considered. The Texas Department of Water Resources (Whitsett and Fox 1979) conducted a reconnaissance survey of a 0.5-km-wide corridor along both banks of lower Onion Creek, extending to a 2-km-wide corridor along the creek's northern bank on its approach to the Colorado River. Of the 92 sites recorded during that survey, 15 are within the Timber Creek Damage Area and 5 are within the Yarrabee Bend Damage Area. In total, some 23 archaeological sites have been recorded within the Timber Creek Damage area, nine are within the Yarrabee Bend Damage Area and three are located within the Bear Onion Confluence Damage Area. None of these resources is located within the proposed project footprints considered in the recommended plan.

The Williamson Creek project area is within the Sunset Valley Damage Area. In 1985, personnel from Espy, Houston and Associates, Inc., conducted survey and shovel testing along the upper Williamson Creek (Espy Houston and Associates, Inc. 1985). Seven sites were recorded, including four within the Sunset Valley Damage Area. A total of six archaeological sites have been recorded within the ten square kilometer Sunset Valley Damage Area, however none of them lie within the proposed project footprint.

The 2002 report (Ringstaff et al.) indicates that only one site could be identified as having potential for listing in the NRHP based on existing information. This site is located within the Bear Onion Confluence Damage Area. The proposed project for the Bear Onion Confluence will not impact this site, which is located some distance from the small project footprint. The 2002 study concludes that the Timber Creek Damage Area appears to have the greatest potential for unrecorded prehistoric sites, based on Holocene soil deposits and the limited extent of development in the area. The Sunset Valley Damage Area (Williamson Creek) appears to have the lowest potential for important unrecorded sites, based on the extensive development and more limited Holocene alluvial deposits. The remaining two damage areas with planned projects appear to have moderate potential for important prehistoric archaeological sites.

CURRENT CULTURAL RESOURCES INVESTIGATIONS – RECOMMENDED PLAN

No previous comprehensive cultural resources inventory or assessment effort has been completed within the project footprints per se, however, as discussed above, many surveys have overlapped the project areas and cultural resources have been identified in the vicinity of the proposed project locations. Research indicates that no previously recorded sites are within the footprints of the designated buy-outs and recreation and ecosystem restoration projects proposed at the three project locations along Onion Creek or within the Williamson Creek project area.

Significant Historic Properties of an architectural or engineering nature are not present within any of the project areas. For purposes of compliance with Section 106 of the NHPA, cultural resources compliance issues for the four project areas are being addressed through ongoing consultation with the office of the SHPO. Impacts to other cultural resource properties will be addressed through ongoing consultation efforts with affected Native American Indian tribes and other groups.

Onion Creek Forrest/Yarrabee Bend and Timber Creek

In addition to the literature search and limited reconnaissance survey conducted during Phase 1 of this study, a pedestrian survey was conducted within each project footprint to locate previously unrecorded archaeological sites that may be impacted by the planned project construction. The proposed project construction for the Yarrabee Bend and Timber Creek project areas consists of the removal of existing structures and installation of recreation and ecosystem restoration features. The planned recreation features include paved and unpaved pathways, open spaces, picnic areas, and a

few small playscapes. The recreation areas will have vegetated buffers between some features and extensive ecosystem restoration areas along their borders and creek banks. The recreation features, as well as the planned restoration planting to revive the ecosystem, all have shallow impacts to the ground surface consisting primarily of minor grading and shallow holes (less and 6 inches in depth) for planting young seedlings. Some shrub removal will be necessary, but again the impacts to the soil deposits should remain shallow. For this reason, deep testing for archaeological deposits was not necessary in the Yarrabee Bend and Timber Creek project locations. Deeply buried sites, if currently *in situ*, will be best preserved by not being disturbed. The removal of structures from the landscape will cause deeper disturbances to the soils. However, these impacts will be confined to the areas already disturbed by the erection the same structures and thus should not threaten intact archaeological deposits.

In June 2006, an archaeologist from the Corps conducted shovel tests within the Yarrabee Bend and the Timber Creek project areas. Both of these project areas were low flat residential neighborhoods. The northern half of the Yarrabee Bend project area is dominated by mobile homes and vacant mobile home sites (see Photo 1). Each home site has a slightly elevated prepared pad for the trailer, electric transformer and an in-ground septic tank. A short paved segment of driveway allows access to the street (Photo 2). Each home site, whether currently occupied or not, showed acute levels of ground disturbance associated with the preparation of the lots for occupation. Top soil was apparently scraped to form the elevated pad sites for the trailers, and excavation for roads, underground utilities and septic tanks has disturbed subsurface deposits to a depth much greater than the expected disturbance from the planned project. The southern portion of the Yarrabee Bend project area is made up of a dense housing development of permanent brick and limestone structures built primarily on concrete foundations (Photo 3). Construction of these houses, including excavation of foundation footings, would have disturbed the upper several feet of soil. Any archaeological materials that may have been in the area would have been disturbed and/or destroyed by the construction of the housing development, roads and buried underground utilities throughout the project area to a depth far greater than any impacts expected from the current project. Shovel testing in several locations around the neighborhood yielded a constant deposit deep silty clay alluvium becoming more clayey with depth. This depositional profile is consistent with an area that receives regular flood water deposits. No cultural materials were observed in any of the shovel test pits excavated. Any prehistoric archaeological deposits would be deeply buried under such deposits and would not be impacted by the activities currently proposed. None of the standing structures within the project footprint meet the criteria for eligibility for inclusion in the National Register of Historic Places.

The Timber Creek project area consists entirely of mobile homes on prepared sites similar to those in Yarrabee Bend. The home sites are raised prepared pads at each lot with underground power and phone lines, and buried septic tanks. Each lot has a short segment of paved driveway. Approximately half of the lots are no longer occupied as the county has begun a buy-out program in the neighborhood. Signs are posted throughout this area warning the area is subject to flooding. Shovel testing in several of the now-vacant lots revealed deep silty clay alluvium deposits throughout the area. This depositional profile is consistent with an area that is regularly inundated by floods. Prehistoric archeological sites in such a setting would be expected at depths deeper than the planned construction impacts. No cultural materials were observed in any of the shovel test pits excavated. None of the standing structures within the project footprint meet the criteria for eligibility for inclusion in the National Register of Historic Places.



Photo 1: View facing east along Vine Hill Road of typical mobile homes at Yarrabee Bend



Photo 2: View facing North of typical vacant mobile home lot at Yarrabee Bend



Photo 3: View facing northwest along Springville St. of typical permanent

Bear Onion Confluence

The Bear Onion project area is physically very different from the Yarrabee Bend and Timber Creek locations. Where those areas are low and largely flat, the Bear Onion project area is a steeply sloped creek bank that lines the backs of four large houses included in the buy-out plan. No shovel tests were excavated along the steep creek banks as such a setting is unlikely to yield cultural deposits and no cultural materials were observed on the surface. The flatter creek tops where archaeological deposits may remain, have been incorporated into landscaped and, in at least one instance, terraced, back yards for the residences along Stagecoach Drive.

Williamson Creek

The Williamson Creek project area has substantially different character than the Onion Creek project areas included in this analysis. Similar to those areas along Onion Creek, flood plain evacuation, or buy-out, of the 25-year flood plain combined with recreation and ecosystem restoration features was selected as the non-structural alternative for the Williamson Creek area. However, unlike the project locations on Onion Creek, some channel modification in the form of benching is also necessary along Williamson Creek. Due to the planned channel modification, shovel testing was deemed insufficient for the Williamson Creek project area. Deep backhoe trenching will be conducted at that location during the next phase of the study; once the property has come into project ownership.

Full analysis of the Williamson Creek project area will be completed, in consultation with the SHPO, prior to any construction activities. A Programmatic Agreement is currently being negotiated between the SHPO and the Corps to define the process by which this work will be carried out. The latest draft of the document is included at the end of this appendix.

RECOMMENDATIONS

The Corps has initiated consultation with the Texas SHPO and identified the areas of potential effect and to determine the level of effort required to identify historic properties within three of the four project areas. The Corps has also initiated consultation with Native American Indian tribes culturally affiliated with the region as per 36 CFR Part 800. Cultural resources survey and inventory investigations designed to meet the requirements of Section 106 of the NHPA have been completed at Yarrabee Bend, Timber Creek and the Bear Creek/Onion Confluence project areas. Deep backhoe trenching will be carried out at the Williamson Creek project areas during the detailed design phase of the study and the results of that investigation will be coordinated with the SHPO. Based on the archival research conducted during Phase 1 of this study and the shovel testing conducted in June 2006, we conclude that there are no Historic Properties located within the project areas surveyed. Results of the survey conducted by the Corps are under review at the TX SHPO and the Corps currently awaits concurrence from the SHPO on the determinations made as a result of the survey.

Although no cultural resources are known to be present within the project areas, unanticipated subsurface deposits are possible at any undertaking that disturbs the ground surface. Evidence of subsurface deposits may be in the form of artifacts (lithics, ceramics, bone, metal, and glass), charcoal, stained soil, or burned rocks. If previously unknown cultural resources are exposed by construction activities associated with the proposed project, work will stop in the immediate vicinity, the resources will be protected and the Texas SHPO will be notified within 24 hours of the discovery. If in consultation with the SHPO it is determined that the resource is significant and cannot be avoided by construction, then an archaeological data recovery plan will be prepared in consultation with the SHPO and will be implemented before construction in that area is allowed to resume.

If unmarked human burials are discovered during construction, work will stop in the immediate vicinity, the remains will be protected, and the local law enforcement agency and the SHPO will be notified as soon as possible. The location of the unmarked human burial will be documented and provisions of the NAGPRA will be implemented, including consultations with Native American Tribes.

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- D R A F T -
PROGRAMMATIC AGREEMENT BETWEEN
THE US ARMY CORPS OF ENGINEERS,
AND
STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE LOWER COLORADO RIVER BASIN INTERIM FEASIBILITY REPORT
AND INTEGRATED ENVIRONMENTAL ASSESSMENT

September 25, 2006 DRAFT

WHEREAS, the US Army Corps of Engineers (USACE), Fort Worth District, and the Lower Colorado River Authority (LCRA), have partnered together to reduce flood damage, provide ecosystem improvement, and recreation opportunities along Onion and Williamson Creeks in Austin, Texas in a project herein referred to as Austin and along the Colorado River, Baughman Slough, and Caney Creek in Wharton, Texas in a project known as Wharton; and

WHEREAS, the Austin and Wharton projects are separate project locations, they are part of the same basin-wide study of the Lower Colorado River basin and are being presented in conjunction to one another as linked projects; and

WHEREAS, the structural improvement, buy-out, restoration and recreation plans at both Austin and Wharton covered under this agreement are identified as the 'Recommended Plan' in the *Lower Colorado River Basin Interim Feasibility Report and Integrated Environmental Assessment, Volumes 1 and 2* (USACE, August. 2006); and

WHEREAS, the Austin project provides for flood damage reduction and ecosystem restoration features at four locations described as Yarrabee Bend, Timber Creek, Bear/Onion Confluence and Williamson Creek through a combination of buy-outs of residential structures within the flood plain and ecosystem restoration measures at Yarrabee Bend, Timber Creek and Bear/Onion Confluence, and through minor channel modification at Williamson Creek (maps of these areas are included as Attachment 1);

WHEREAS, the Wharton project addresses the flooding problems for the city of Wharton, Texas through structural features in the form of earthen levees and accompanying sumps, floodwalls, a channel enlargement, storm drain type drainage structures, and an open cut ditch (map of proposed project area included as Attachment 2); and

WHEREAS, all other construction activities not specifically listed in the referenced interim feasibility report as the "recommended plan" are separate undertakings and are therefore not part of this agreement; and

WHEREAS, the USACE, pursuant to 36 CFR Part 800.6(a)(1)(i)(c), have invited the Advisory Council on Historic Preservation to participate in this consultation and is awaiting Council response; and

WHEREAS, the USACE, pursuant to 36 CFR Part 800.3(f)(2), has initiated consultation with the
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appropriate Federally recognized Indian tribes who historically utilized the project areas, provided the Tribes with copies of all reports and findings to date, and invited Tribal comments, concerns and inputs on the proposed project (a list of Tribes thus far contacted is included at Attachment 3); and

WHEREAS, the SHPO and the USACE have participated in the consultation and have been invited to be signatories to this Programmatic Agreement.

NOW, THEREFORE; The USACE, and the SHPO agree that the consultation process for the Project shall be carried out under this Programmatic Agreement and in accordance with the following stipulations to satisfy the USACE's Section 106 responsibilities.

Stipulations

The USACE will ensure the following stipulations are carried out concerning all cultural resources within the construction footprint and viewshed of the projects proposed at the Austin and Wharton project locations.

(A) Historic Structures

(1) Identification of Historic Properties

a. Recordation.

- i. Austin: A reconnaissance survey of buildings and structures was conducted at Yarrabee Bend, Timber Creek, Bear/Onion Confluence areas of the Austin project. No structures within the project construction footprint, nor any within the proposed project viewshed, meet the criteria as described 36CRF Part 60.4.a-d for inclusion in the NRHP and no further work will be conducted at these locations to identify historic structures.

Structures along the Williamson Creek project area will be assessed in conjunction with the archaeological survey which will be carried out in accordance with stipulation (B)(1)a.i below.

- ii. Wharton: An overview study covering approximately nine miles of proposed levee alignment within historic Wharton was conducted to identify, document, and evaluate historic-age standing structures that could be affected by the proposed Wharton levee alignment. For the purposes of this study, the APE was considered to extend 500 feet beyond the proposed alignment. Because this alignment is only approximate, additional survey will be necessary once a final alignment has been determined. A report of the findings of the survey conducted will be coordinated with the SHPO once the report has been completed (A map of the area surveyed is included as Attachment 4).

b. Determination of National Register Eligibility.

- i. Austin: No structures within the Austin project areas investigated are eligible for listing in the NHRP. Once investigations have taken place at the remaining, Williamson Creek area, determinations will be made in accordance with 36CFR Part 800.4 for any historic structures within the project area.

- ii. Wharton: Only a preliminary determination has been made for the Wharton project to date. The draft report will be sent to the SHPO for review and comment on these preliminary findings once the draft report has been prepared. When final levee alignments have been determined, and further survey completed, any determinations made concerning historic structures within the final alignment will be made in accordance with 36CFR Part 800.4.

(2) Assessment of Adverse Effect

- a. In consultation with the SHPO, The USACE shall apply Criteria of Adverse Effect to all historic properties identified within the construction APE in accordance with 36 CFR Part 800.5
- b. If the effect is determined to be adverse, as defined in 36 CFR Part 800.5, the USACE will develop a treatment plan in consultation with the SHPO.

(B) Archeology

The USACE will ensure the following stipulations are carried out concerning archaeological resources within the construction footprint of the USACE project at the Onion Creek and Williamson Creek projects Austin, TX and within the Wharton, TX project locations. The construction footprint at each location constitutes the APE for archaeological resources:

(1) Identification of Historic Properties

a. Survey.

- i. Austin: For the Austin project. the USACE has conducted a cultural resources survey within the entire construction footprint of the Yarrabee Bend, Timber Creek, Bear/Onion Confluence areas. The survey was conducted by professional archaeologists meeting the Secretary of the Interior's professional qualification standards as defined in the Federal Register Volume 48 No. 190 page 44738. Results of this survey were submitted to the SHPO for review under separate cover.

The portion of the Austin project along Williamson Creek cannot be investigated for cultural resources until project lands have been acquired because deep trenching is required in occupied residential lots. Appropriate cultural resources investigations will be carried out prior to construction during the Preconstruction Engineering and Design phase of the project.

- ii. Wharton: Reconnaissance level surveys have been conducted throughout the Wharton project area. These investigations consisted of visual inspection of proposed project locations and background research for previously recorded sites for planning purposes only. All proposed construction areas within the Wharton project, (especially the levee alignments and sump areas that have yet to be defined by the project engineers) will be surveyed for cultural resources prior to project construction, during the Preconstruction Engineering and Design phase of the project.

b. Determination of National Register Eligibility.

- i. Austin: The USACE, in consultation with the SHPO, and in accordance with 36CFR Part 800.4. has determined that No Historic Properties are present at the Yarrabee Bend, Timber Creek, and Bear Onion Confluence areas within the Onion Creek project. No determinations have been made for the Williamson Creek area because investigations were not possible. Once the investigations are complete, these determinations will be made in accordance with 36CFR Part 800.4.

- ii. Wharton: No determinations have been made for the Wharton project area because investigations were not possible. Once the investigations are complete, these determinations will be made in accordance with 36CFR Part 800.4.

Any Historic Properties identified in any of the project areas will be evaluated and treated as described in the stipulations specified below.

- c. Test Excavations. In the event that additional information is required to assess the eligibility of any cultural resource located within the Austin or Wharton project areas for inclusion in the NRHP, the USACE and SHPO shall consult to prepare a test excavation plan.

(2) Assessment of Adverse Effect

- a. In consultation with the SHPO, The USACE shall apply Criteria of Adverse Effect to all historic properties identified within the construction APE in accordance with 36 CFR Part 800.5
- b. If the effect is determined to be adverse, as defined in 36 CFR Part 800.5, the USACE will develop a treatment plan in consultation with the SHPO.

(C) Treatment Of Historic Properties

(1) Avoidance. Whenever possible, historic properties will be avoided by project impacts and protected in place.

(2) Data Recovery Plan. A detailed data recovery plan shall be developed by the USACE in consultation with the SHPO for those historic properties for which adverse effect cannot be avoided. The SHPO will provide written comments to the USACE within 30 days of receipt of the plan. The plan shall specify, at a minimum:

- a. the historic property, properties, or portions of properties where data recovery is to be carried out;
- b. any historic property, properties, or portions of properties that will be destroyed/altered/transferred without data recovery;
- c. the research questions to be addressed through the data recovery
- d. the methods to be used, with explanation of their relevance to the research questions
- e. the methods to be used in analysis, data management, and dissemination of data, including a schedule;
- f. the proposed disposition of recovered materials and records;
- g. proposed methods for involving the interested public in the data recovery including, but no limited to methods by which Federally recognized Indian Tribes who historically used this region or continue to use the area, will be kept informed of the work and afforded the opportunity to participate;
- h. proposed methods for disseminating the results of the work to the interested public and to appropriate Federally recognized Indian Tribes who historically used this region or continue to use the area; and
- i. proposed schedule for the submission of progress reports to the SHPO.

If necessary, additional property-specific data recovery strategies will be developed within the overall framework of the data recovery plan for direction of work at individual properties or

groups of properties. The need for such additional strategies will be determined in consultation with the SHPO.

- (3) Treatment of Human Remains. Treatment of human remains, including prehistoric and historic burials, will be carried out in accordance with a comprehensive plan detailed in the research design developed under stipulation (3)b.

(4) Discovery

- a. If previously unidentified cultural resources are identified during construction, construction shall stop in the vicinity of the resource, and the USACE cultural resources technical point of contact shall be notified within 24 hours of the discovery.
- b. The USACE shall immediately notify the SHPO. Within 48 hours of notification, field assessment will be undertaken. Assessment of the site by the USACE under 36 CFR Part 60 will be completed within 5 days or less of discovery.
- c. If the cultural resource is determined to be eligible for inclusion in the NRHP, a treatment plan will be specified by the USACE within 10 days of assessment in consultation with the SHPO.
- d. Any burials accidentally disinterred will be treated in compliance with NAGPRA, if applicable.

(5) Reporting

Upon completion of each major phase of work (survey, testing, or data recovery), the USACE shall submit draft reports to the SHPO. Comments shall be provided to the USACE within 30 calendar days from receipt. The final report will be distributed among consulting parties, including the appropriate federally recognized Indian Tribes according to a plan prepared by the USACE and consulting parties.

(D) Document Review and Comment:

The SHPO will be afforded thirty (30) days after receipt to comment on any documentation submitted by the USACE. Documents will then be revised according to agency comments until all agencies agree the documents are acceptable. No construction will begin until all parties have agreed that the final report on cultural resource mitigation is acceptable.

(E) Dispute Resolution:

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the USACE shall consult with the objecting party(ies) to resolve the objection. If the USACE determines, within 30 days, that such objection(s) cannot be resolved, the USACE will:

- (1) Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise the USACE on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the PA, will be taken into account by the USACE in reaching a final decision regarding the dispute.
- (2) If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the USACE may render a decision regarding the dispute. In reaching its decision, the USACE will take into account all comments regarding the dispute from the parties to the PA.

- (3) The USACE's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged. The USACE will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The USACE's decision will be final.

(F) Duration, Amendments and Termination:

This agreement will be null and void if its terms are not carried out within fifteen (15) years from the date of its execution. Prior to such time, the USACE may consult with the other signatories to reconsider the terms of the agreement and amend in accordance with this stipulation.

Any party to this agreement may propose, in writing, to USACE that the terms and/or stipulations of this agreement be amended. USACE will consult with the other parties to this agreement to consider such an amendment.

Any party to this agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, USACE will comply with 36 CFR sections 800.4 through 800.6 with regard to the activities covered by this agreement.

Execution and implementation of this agreement is evidence that USACE has satisfied its Section 106 and 110 responsibilities for the Project.

US ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

By: _____ Date _____
CHRISTOPHER W. MARTIN, Colonel, EN, Commanding

TEXAS HISTORICAL COMMISSION

By: _____ Date _____
MR. F. LAWRENCE OAKS, State Historic Preservation Officer